

SEP 29 4 07 PM '97

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )

Friends for Fasi and its treasurer )

China Airlines )

Longevity International Enterprises )

Corporation )

Frank Fasi )

MUR 4594

**SENSITIVE**

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter involves the possible acceptance of in-kind contributions, by Frank Fasi, former mayor of the City and County of Honolulu, and Friends for Fasi, the campaign committee of Frank Fasi, from 1984 to the present, in the form of reduced rental costs for office space at the Chinatown Cultural Plaza Shopping Center ("Cultural Plaza"), the owners of which may be foreign nationals or may have been influenced and/or controlled by foreign nationals. On December 3, 1996, the Commission found reason to believe that Friends for Fasi and its treasurer (the "Committee") violated 2 U.S.C. § 441e. The Commission also found reason to believe that China Airlines ("CAL"), Longevity International Enterprises Corporation ("Longevity"), and Frank Fasi violated 441e and approved Subpoenas for Documents and Orders for Written Answers for all Respondents. This matter was reassigned to present staff in March 1997. Through numerous telephone discussions and written communications this Office has engaged in follow-up requests for additional information from counsel for CAL. Also, this Office has maintained contact with the referring agency, the Hawaii Campaign Spending Commission, which has provided much helpful information in this investigation. Based on the responses from

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respondents and the issues summarized below, this Office seeks additional limited investigation and recommends declining pre-probable cause conciliation at this time.

## II. SUMMARY AND ANALYSES

### A. Longevity/Frank Fasi and Friends for Fasi/China Airlines

#### 1. Responses and Analysis

The discovery questions and requests for documents focus on a number of issues, including the status of Longevity vis-a-vis the definition of "foreign national" at 2 U.S.C. § 441e, the relationship of Longevity to the Cultural Plaza, the identity of the owners of the Cultural Plaza and identity of officers, directors and/or managers of Longevity who were involved in the leasing of the office space at the Cultural Plaza to Friends for Fasi or Frank Fasi, the terms of the lease agreements between Longevity and Friends for Fasi/Frank Fasi, the relationship of China Airlines to the Cultural Plaza, and the sequence of events and the factors which led to the decision to place the office of Friends for Fasi in the Cultural Plaza.

The responses to the interrogatories and the responsive documents answer the questions presented, provide new information, assert arguments, and raise new issues which will require further investigation. They confirm that Longevity has been registered as a domestic corporation since February 21, 1979, although seven of eight of the current directors are Taiwanese nationals. Longevity has been the owner of the Cultural Plaza since May 11, 1979.

Frank F. Fasi entered into a lease in 1981 for a private office and storage facility in the Cultural Plaza. Mr. Fasi used this space as a campaign office and storage space during his campaigns for Governor in 1982, Mayor in 1984, Mayor in 1988, Mayor in 1992, Governor in 1994, and Mayor in 1996. Mr. Fasi had a written lease with Longevity from January 30, 1981

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until February 29, 1984 with an unexecuted option to renew for two years. Fasi was a month-to-month tenant, from March 1, 1984 until November 1996, after his written lease expired. The original written lease indicates that Fasi paid \$1,546.65 per month for 3,437 square feet. No written lease exists for Fasi's month-to-month tenancy, but according to the interrogatory responses from Fasi, he orally agreed to pay \$800.00 per month for "the space." Based on the referral of this matter, the First General Counsel's report assumed that Fasi's rental rate of \$800 per month was for approximately 2,700 square feet of space, or \$.29 per square foot. Subpoena generated documents provided by Fasi in response to the Commission's discovery request indicate "the space" that Fasi actually occupied from 1984 through 1996 was the entire previous rental space of 3,437 square feet which, for \$800 per month, would equal approximately \$.23 per square foot. See Attachment 6. Utilizing a conservative rental rate for this time period in Honolulu, the yearly charge which would have represented the ordinary course of business with regard to the Cultural Plaza would have been \$61,866.00  $((\$1.50 \times 12) \times 3,437)$  rather than the \$9,486.12  $((\$0.23 \times 12) \times 3,437)$  charged to Mr. Fasi and Friends for Fasi by Longevity.<sup>1</sup> Applying these figures to all twelve years at issue, the total amount in violation could be as much as \$628,558.56; the amount in violation for 1992-1996 could equal approximately \$262,000.

In August '95, Rex Fa ("Fa"), the new General Manager of the China Cultural Plaza for Longevity, notified Fasi that he had replaced the prior general manager of the Cultural Plaza and that he had to adjust Fasi's rent schedule. Correspondence between Fasi, Fa, and Lawrence Chang, the current operations manager of the Cultural Plaza, indicate that the terms of a new

<sup>1</sup> See the discussion of rental costs in Honolulu according to the Comparative Statistics of Industrial and Office Real Estate Markets in the First General Counsel's Report dated November 26, 1996. Additionally, the Office that originally referred this matter provided additional information, including a sample of commercial rents of similarly situated office buildings in the immediate area of the Cultural Plaza, which consistently supports an estimated rental rate of equal to or greater than \$1.50 for the time period of 1990-1996 in Honolulu.

lease would have required a monthly rental payment of \$3,500.00. These negotiations between Fa and Fasi continued for almost a year until Fasi vacated the premises in November 1996.

The circumstances surrounding the terms of Fasi's month-to-month tenancy between 1984 and 1995 and the extent of CAL's involvement in this matter is unclear at this point in the investigation. Mr. Fasi does not recall who initially contacted him concerning a lease from the Cultural Plaza and he does not remember the individual who represented the Cultural Plaza in the transaction. According to Longevity's responses and correspondence provided by Friends for Fasi and Mr. Fasi, Mr. Louis C. L. Chang was the operations manager of the Cultural Plaza during the period of time from 1988 to 1995. His duties and responsibilities included the day to day operations of dealing with the tenants, dealing with the problems of the tenants, and decisions relating to the rental of space. Mr. Chang is a United States Citizen. Also, Mr. Karl C. P. Wang was the general manager of the Cultural Plaza during Fasi's tenancy, although the exact dates of his employment there have yet to be determined. Mr. Wang's duties during his tenure at the Cultural Plaza and his citizenship status have not yet been disclosed. In addition, Longevity's response to the Commission's interrogatories in MUR 2892, dated June 12, 1990, indicate that Mr. Hsu Chun-I was the general manager of the Cultural Plaza in 1987. See Attachment 7 at 4. Mr. Chun-I was, in fact, responsible for the contribution at issue in that matter. Id. at 4. This response, along with correspondence provided by Fasi, also indicates that Maybelle Pang has served as the assistant to Longevity's operations since May 1979 and indicates that she has been privy to the rental negotiations and documents regarding Fasi's entire tenancy at the Cultural Plaza. Id. at 5; Attachment 6 at 1, 20.

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At first blush, CAL's response appears to preclude further investigation into their involvement in this matter. CAL claims that it "does not now have, nor has it ever had, an ownership interest in the Cultural Plaza." A closer reading of China Airline's response, though, raises several questions concerning whether Mr. Chang and Mr. Wang, discussed above, were acting as agents of CAL at the same time that they were managing the Cultural Plaza for Longevity. CAL states that "[o]ver the years, CAL, which had experience in ownership and management of a hotel in Honolulu and a civic interest in assisting the Chinese-American community there, seconded some employees to Longevity." Attachment 5, p. 2. This Office requested further information concerning: a) the name of the hotel that CAL owned and managed in Honolulu, b) their use of the term "seconded" in the context of their response (e.g. were the employees transferred or merely referred to Longevity by CAL), and 3) an explanation of the relationship between CAL and Longevity. Attachment 4. In response, CAL stated: a) they own the Holiday Inn Waikiki, b) "[a]fter Longevity assumed ownership of the faltering Cultural Plaza, CAL offered to second some of its experienced employees to Longevity to aid in management of the property. The seconded employees became full employees of Longevity and were paid, supervised, and directed by Longevity. They did not report to CAL or otherwise retain any employee-employer relationship with CAL while working for Longevity. Most of the seconded employees eventually returned to work for CAL, typically after three or four years with Longevity. Approximately ten employees were seconded to Longevity over the years," and c) "[w]hile there never has been any direct or indirect corporate relationship between CAL and Longevity, some of Longevity's original shareholders and directors held senior positions in CAL." Attachment 3.

To follow-up on these answers, a member of this office informally requested information concerning the arrangement whereby CAL seconded employees to Longevity, the names of the “[a]pproximately ten employees who were seconded to Longevity over the years,” and the names of each of “Longevity’s original shareholders and directors [who] held senior positions in CAL.”

Attachment 2. Although counsel initially seemed amenable to these requests during a telephone conversation, he later, by written correspondence, declined to answer the additional questions.

Attachment 1.

In addition to the factual responses recited above, Longevity and CAL assert that the rent paid by Mr. Fasi was within the range of reasonable market rates for the space leased in the relevant time period and argue that the statute of limitations may be applicable. First, Longevity’s response and CAL’s accompanying affidavit of Robert Hastings, a “certified expert in real estate appraisal with particular expertise in the Honolulu area,” assert that the rental amount, \$800 per month from March 1984 through November 1996, was consistent with market rates for that property. See Attachment 1. Further, they claim that the office classifications discussed in the Factual and Legal Analysis are in error, the rent in the Cultural Plaza varies, several tenants of the Cultural Plaza currently and historically have paid very low or effectively no rent for their space, and commercial vacancy rates increased dramatically during the period 1992-1996.

Longevity’s response and Mr. Hastings’ submission fails, though, to provide an alternative system of office classification for the twelve year period in which Mr. Fasi leased space in the Cultural Plaza for \$800.00 a month. Further, CAL’s “expert” provides a relatively imprecise estimate for the fair market rate for a limited number of the years in question.

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According to Mr. Hastings, "the approximate market range for such a lease in the period from 1992 to 1996 would be \$0.25 per square foot to \$0.75 per square foot. In theory, this \$0.50 per square foot differential appears insignificant. Yet, in practice, it means that the monthly rental prices for Fasi's space could have varied widely, from \$859.25 to \$2,577.75. The utility of an expert's affidavit on rental prices appears questionable when the monetary range is so large.

Further, Mr. Fasi was paying below the lower end of the scale as his cost was approximately \$.23 per square foot.<sup>2</sup>

To further the assertion that the rent in the Cultural Plaza varies, Longevity provided copies of leases for three other units in the Cultural Plaza which were of comparable size and location to the space leased by Friends for Fasi. These spaces are leased out by Longevity to charitable organizations for \$1.00 a year.<sup>3</sup> The Commission's Subpoena to Longevity requested that they "[s]tate whether, at the time of the initial lease agreement, there were other units in [the] Cultural Plaza which were comparable in size and location to the space leased by Friends for Fasi or to another lessee identified in answer to Interrogatory 3." This interrogatory answer, though, does not make clear whether all or just a select few of the leases for comparable spaces were provided. Assuming that the three leases provided represents a select group of lessees, the response from Longevity raises the inference that Fasi was provided with a rent subsidy which Longevity likened to a charitable contribution.

Finally, Mr. Hastings' assertion that the commercial vacancy rates in Honolulu increased dramatically during 1992-1996 fails to resolve inconsistencies associated with the time periods

<sup>2</sup> In contrast, the rent that Mr. Fasi paid at the Cultural Plaza between 1981-1984 equaled \$0.45 per square foot. This figure, as a much higher amount than that paid by Mr. Fasi later on, falls firmly in the middle of the range provided by Mr. Hastings.

<sup>3</sup> The three charitable organizations include the Hsing Chung Hui Memorial Foundation, the Chinatown Culture Service Center, Inc., and the Chee Kung Tong Society.

preceding and during this occurrence. First, it remains unexplained why Fasi's rent was lowered by nearly one-half (from \$1,546.65 to \$800.00) in 1984 at the termination of his written lease and the commencement of his oral agreement for the same rental space. Further, Mr. Hastings did not address the unusual fact that the amount of Mr. Fasi's monthly rent for this commercial space remained unchanged, neither increased or decreased, over a span of twelve years. In fact, the rental figures presented by Mr. Fa, who replaced Karl Wang as General Manager in August 1995, for leases commencing in the Fall 1995 indicate a minimum base rent of \$1.20 per square foot in addition to being assessed a prorated common area maintenance fee, real property tax, and a 4.16% general excise tax on the total amount due. The sum of these figures equals a rent of almost \$2.00 per square foot which far exceeds the range provided by Mr. Hastings for this time period. In addition, Longevity's response indicates that "[s]ince Mr. Fasi vacated the space in November 1996...[t]he "base" rent paid by the tenant is \$1.00 a square foot. It is even more surprising if one takes into account that tenants at the Cultural Plaza, according to correspondence supplied by Fasi, e.g. Attachment 6 at 4-6, are typically assessed, in addition to the "base" rent, a prorated common area maintenance fee, real property tax, and 4.16% general excise tax on the total amount due. These additional assessments render the total rent as an amount almost double the "base" rent. The rent proposed by Mr. Fa and Mr. Lawrence Chang, along with the rent paid by the tenant who has taken over Fasi's space, represents a great increase over the rate paid by Mr. Fasi. This data indicates that Mr. Hastings' comments about rental prices are inconsistent with other information provided by respondents. Further, his theories concerning commercial vacancy rates in Honolulu do not apply to the Cultural Plaza, particularly concerning the time period of 1995-1996.



Secondly, Longevity and CAL argue that the statute of limitations bars this claim that is “based on a rental agreement arrangement established approximately 16 years ago.” As discussed above, documents provided by respondents indicate that Fasi paid \$800.00 for 3,437 square feet of space in 1984-1996 and that during this period of time Friends for Fasi utilized the space for campaign activities. Because this suspected subsidy persisted until recently, and given the amount of the contribution in issue, this matter is worth pursuing.<sup>4</sup>

## 2. Investigation

Investigative efforts by this Office’s staff have revealed that Mr. Wang, formerly the general manager of the Cultural Plaza where Fasi leased space, is currently the General Manager of the Holiday Inn, Waikiki. This hotel, formerly known as the Dynasty Hotel of Hawaii (“Dynasty”), is owned by China Airlines. Also, inquiries made by this Office’s staff concerning Mr. Chang, the former operations manager at the Cultural Plaza, indicate that he had formerly been employed at CAL before his current retirement although Mr. Chang would not confirm this information during a telephone interview. In addition, responsive documents from Longevity indicate that both Mr. Chang and Mr. Wang are listed as Officer and Director, respectively, in the 1996 “Articles of Incorporation of Longevity International Enterprises Corporation.”

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<sup>4</sup> In fact, information provided by Robert Y. Watada, Executive Director of the State of Hawaii Campaign Spending Commission, does not indicate that Fasi’s rent was disclosed on election reports prior to 1996. If so, the terms of his “oral” lease were, by definition, undisclosed and thus undiscoverable.

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### 3. Summary

According to the information provided by Respondents concerning Fasi's rental history at the Cultural Plaza, his oral lease, spanning a twelve year period of time and providing for a \$800.00 a month rental payment appears to be an "in-kind" contribution by Longevity. Also, the investigation has demonstrated that it is very likely that CAL may have had some control over the operations of Longevity and the management of the Cultural Plaza through Mr. Chang and Mr. Wang. This Office suspects that Mr. Chang and Mr. Wang were: a) two of the ten employees who had been seconded to Longevity and who eventually returned to work for CAL and; b) two of Longevity's shareholders and directors who held senior positions in CAL. Although CAL does not own the Cultural Plaza, its control over the decision making processes of Longevity with regard to the management of the Cultural Plaza would meet the requirements for a 441e violation under the Commission's regulations concerning foreign national donations.<sup>5</sup>

11 C.F.R. § 110.4(a).

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<sup>5</sup> The Commission's regulations include the following prohibitions at 11 C.F.R. § 110.4(a):

(1) A foreign national shall not directly or through any other person make a contribution, or an expenditure, or expressly or impliedly promise to make a contribution, or an expenditure, in connection with a convention, a caucus, or a primary, general, special or run-off election in connection with any local, State, or Federal public office.

(2) No person shall solicit, accept, or receive a contribution as set out above from a foreign national.

(3) A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person's Federal or nonfederal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, State, or Federal office or decisions concerning the administration of a political committee.

### III. PROPOSED DISCOVERY

At this juncture, we have received pre-probable cause conciliation requests from CAL and Longevity. However, they have denied any violation or involvement in the providing of an in-kind contribution to Mr. Fasi and Friends for Fasi and to date, informal investigation has been unsuccessful at clarifying: 1) Longevity's ownership status; 2) the relationship between CAL and Longevity; 3) the role that CAL's "seconded" employees, particularly Mr. Chang and Mr. Wang, played in the management and supervision of the Cultural Plaza and in the possible in-kind contribution made to Mr. Fasi and Friends for Fasi; 4) the precise terms of Mr. Fasi's "oral" agreement for rental space at the Cultural Plaza; and 5) the circumstances that led to the creation of the "oral" agreement between Mr. Fasi and Longevity. As discussed above, this Office attempted to resolve these issues informally with CAL's counsel. In light of CAL's lack of cooperation and in order to obtain this necessary information about CAL's interaction with Longevity and its involvement in the management of the Cultural Plaza, we recommend declining pre-probable cause conciliation at this time for all respondents.

In order to ascertain the extent of CAL's involvement in this matter, it is necessary to attain confirmation of an association, or lack thereof, between managerial/supervisory level staff, at Longevity and CAL. The existence of such an association would help determine if there is a foreign national nexus. Further, it appears that testimony by Louis C. L. Chang, Carl C. P. Wang, Hsu Chun-I, and Maybelle Pang would reveal CAL's role in the management arrangement between the respondents and Longevity's decision to enter into the "oral" agreement with Mr. Fasi. Depositions of Frank Fasi and Salvador A. Fasi, Mr. Fasi's son and commercial representative (see Attachment 6), as well, could reveal the elements of the "oral"

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rental agreement between Mr. Fasi and Longevity. Because resources are not available to further investigate in this way, this Office has crafted broad written discovery (supplemental subpoenas for documents and orders for written answers) in lieu of costly depositions and so as to maximize the possibility of proving or disproving the requisite elements of a foreign national violation. Therefore, at this time, supplemental subpoenas to produce documents and orders to submit written answers are recommended for CAL, Longevity, Louis C. L. Chang, Karl C. P. Wang, Hsu Chun-I, Maybelle Pang, Frank F. Fasi, and Salvador A. Fasi.<sup>6</sup> Additionally, a subpoena for Robert C. Hastings, Jr., CAL's real estate expert, to produce documents and an order to submit written answers is recommended to establish the basis for his expert opinion and, additionally, provides an alternative means of obtaining Honolulu rental information otherwise attainable only through the prohibitively costly step of this Office retaining its own individual expert.<sup>7</sup>

#### IV. RECOMMENDATIONS

1. Decline, at this time, to enter into conciliation with China Airlines and Longevity International Enterprises prior to a finding of probable cause to believe.
2. Approve the attached Subpoenas to Produce Documents and Order for Written Answers to CAL and Longevity.
3. Approve the attached Subpoenas to Produce Documents and Order for Written Answers to Louis C.L. Chang, Karl C. P. Wang, Hsu Chun-I, Maybelle Pang, Frank F. Fasi, and Salvador A. Fasi.

<sup>6</sup> Although prior Subpoenas issued to respondents included the instructions that "[t]he discovery request shall refer to the time period from January 1, 1987 to the present" the instructions included with the attached subpoenas indicate that the time period shall be from "January 1, 1984 to the present." This change has been effected to reflect the fact that Mr. Fasi's oral agreement commenced at the conclusion of his written lease on February 29, 1984. This Office believes that it is reasonable to suspect that negotiations between Mr. Fasi and Longevity occurred during or around this time period. As such, corporate documents and testimony dating back to January 1, 1984, if any, would be relevant and pertinent to the investigation.


<sup>7</sup> Rule 26(b)(4)(B) of the Federal Civil Judicial Procedure and Rules, which states that "[a] party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party..." provides legal authority for this Office's request to obtain the information which forms the basis for Mr. Hastings' expert opinion concerning Honolulu rental information. Also, Rule 26(a)(2)(B) provides that expert testimony must be accompanied by a statement of the "basis and reasons thereof" for the rendered opinion.

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4. Approve the attached Subpoenas to Produce Documents and Order for Written Answers to Robert C. Hastings, Jr.
5. Approve the appropriate letters.

Lawrence M. Noble  
General Counsel

9/28/97  
Date

BY:   
Lois G. Lerner  
Associate General Counsel

Attachments:

1. Letter from counsel dated February 14, 1997
2. Letter from counsel dated May 22, 1997
3. Letter from this Office to counsel dated May 14, 1997
4. Letter from counsel dated May 9, 1997
5. Letter from this Office to counsel dated May 2, 1997
6. Documents received with Fasi and Friends for Fasi interrogatory responses, dated February 17, 1997.
7. Longevity's response to interrogatories in MUR 2892, dated June 12, 1990.
8. Subpoena and Order for CAL
9. Subpoena and Order for Longevity
10. Sample Subpoena and Order for Louis C.L. Chang, Karl C.P. Wang, Maybelle Pang, and Hsu Chun-I
11. Subpoena and Order for Frank F. Fasi
12. Subpoena and Order for Salvador A. Fasi
13. Subpoena and Order for Robert C. Hastings, Jr.

Staff Assigned: Nancy E. Bell

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